

Office of the State Controller

Self-Assessment of Internal Controls

Tax/Payroll Compliance Cycle

Payroll Compliance-Fringe Benefits

FRINGE BENEFITS

IRS Code Section 132, Certain Fringe Benefits provides an exclusion from taxation for fringe benefits which are provided as a:

1. no-additional cost service;
2. qualified employee discount;
3. working condition fringe;
4. de-minimis fringe;
5. a qualified transportation fringe; and
6. a qualified moving expense reimbursement.

Code Section 132(j) limits the benefits of Code Section 132 by stating that to the extent that the fringe benefit is of a type the tax treatment of which is covered by other code sections, Code Section 132 will not apply. Code Section 106 addresses employer-provided health insurance; Code Sec. 119, meals and lodging furnished for the convenience of the employer; and Code Section 127 covers educational assistance.

IRC Section 132(h)(9) further states that it will apply to educational expenses not covered by Section 127 only to the extent such amounts are considered a working condition fringe benefit. A “working condition fringe benefit” is described as any property or service provided to the employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowed as a deduction under Code Section 162 or 167.

AUTOMOBILE EXPENSES

The Internal Revenue Code requires the value of the personal use of an employer provided vehicle that does not qualify as non-taxable fringe benefit to be included in the employee’s taxable wages as shown on his/her Form W-2.

G.S. 143-341 requires every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between his official work station and his home to reimburse the State for these trips at a rate to be computed by the Department of

Administration. This rate should approximate the benefit derived from the use of the vehicle as prescribed by the Internal Revenue Code and shall be made a payroll deduction. The outline below sets forth the IRS valuation rules for the personal use of an employer provided vehicle. In addition to the reimbursement required of the personal use of State owned vehicles, the Internal Revenue Code requires employees and State officials receiving reimbursements in excess of the allowable Federal cents per-mile-rate for the business use of their personal vehicle to include this amount in the recipients W-2. For the 2009 calendar year the allowable Federal cents per mile rate is 55 cents per mile and for the 2010 calendar year the allowable Federal cents per mile rate is 50 cents per mile.

AUTOMOBILE EXPENSES AS A NONTAXABLE FRINGE BENEFIT

There are four general situations in which the use of an employer provided vehicle will result in a **non-taxable** fringe benefit to the recipient/employee:

1. The vehicle is used 100% for business reasons.
2. The value of the personal use is so small that accounting for it is unreasonable or administratively impractical.
3. The employer maintains a written policy against the employee's personal use of the car and other specified conditions are met.
4. The employer maintains a written policy that restricts the use of the car to commuting and other specified conditions are met. Under this alternative, an amount determined by reference to the Special Valuation Rules must be included in the employee's taxable wages.

If the employee's use of the car does not fall within one of the above situations, then the value of the personal use must be computed by the employer and included in taxable wages as shown on Form W-2 or the employee should reimburse the employer for the personal use.

GENERAL VALUATION RULE

Under the general valuation value is defined as what the cost would be to a person leasing from a third party under the same or comparable terms in the same geographic area. Unless the employee can prove that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be determined by using the cents-per-mile rate, but must be determined based on a comparable lease.

SPECIAL VALUATION RULES

There are three special valuation rules that relate to automobile usage:

1. Automobile lease valuation rule;
2. Vehicle cents-per-mile valuation rule; and
3. Commuting valuation rule.

If one of the special rules listed above has been properly used, the employee must include in income the value determined under the above rule minus any reimbursement that the employee has paid to the employer. If one of the special valuation rules is being used, the employee must be notified of the election by January 31 of the calendar year for which the election will apply or 30 days after the first benefit is applied, whichever is later.

AUTOMOBILE LEASE VALUATION RULE

The annual lease valuation of an automobile is figured as follows:

1. Determine the FMV of the automobile as of the first date the automobile is available for personal use.
2. Using the IRS Annual Lease Value Table, read down column 1 until reaching the dollar range within which the FMV of the automobile falls. Then read across to column 2 to find the corresponding annual lease value.

SAFE HARBOR VALUATION RULE

The Safe harbor value may be used as the FMV of the automobile. For an automobile that is owned by the State the safe harbor value is the retail value of the automobile listed in a nationally recognized publication that regularly reports new or used automobile retail values.

The IRS Annual Lease Value Table includes the FMV of maintenance and insurance for the automobile. The annual lease values do not include the FMV of the fuel the State provides, regardless of whether the fuel is provided in kind or reimbursed. Fuel provided should be valued at cost or at 55 cents per mile for calendar year 2009 and 50 cents per mile for calendar year 2010 for all miles driven by the employee.

The lease values calculated under these rules are based on a four-year lease term. The annual lease values will generally stay the same for the period that begins with the first date used for the automobile and ends on December 31 of the 4th full calendar year following that date. If the vehicle is not available for a full year then the lease value should be prorated based on the portion of the year it was available.

VEHICLE CENTS-PER-MILE VALUATION RULE

If an employee is provided with a vehicle that is either reasonably expected to be used regularly in a trade or business throughout the calendar year or satisfies the Mileage

Rule requirements, the value of the benefit provided is the standard mileage rate multiplied by the total miles the employee drives the vehicle for personal purposes. For 2009, this rate is 55 cents per mile for all miles. For 2010, this rate is 50 cents per mile for all miles. The standard mileage rate must be applied to personal miles independent of business miles.

A vehicle meets the mileage rule in a calendar year if:

1. It is actually driven at least 10,000 miles in that year; and
2. it is used during the year primarily by employees.

The vehicle is considered used primarily by employees if employees use it consistently for commuting. If the vehicle is not owned or leased during part of the year, the 10,000 mile requirement is reduced proportionately to reflect the periods when the vehicle was owned or leased.

The cents-per-mile rate includes the FMV of maintenance and insurance for the vehicle. For miles driven in the United States the cents-per-mile rate includes the FMV of fuel provided. If fuel is not provided, the rate may be reduced by no more than 55 cents per mile for calendar year 2009 and 50 cents per mile for calendar year 2010.

Use the cents-per-mile valuation rule to value the miles driven for personal purposes. To figure how much to include in an employee's income, multiply the number of personal miles driven by the employee by the appropriate cents-per-mile rate.

Do not use the cents-per-mile valuation rule to determine the value of the use of an automobile if the FMV of the automobile on the first date on which the automobile is made available to employees for personal use exceeds the sum of the maximum recovery deductions allowable under section 280F(a)(2) of the Code for the first 5 tax years in the recovery period for an automobile first placed in service during a calendar year after 1986. The maximum recovery deductions referred to under section 280F(a)(2) is \$12,060.

COMMUTING VALUATION RULE

The value of the commuting use of an employer-provided vehicle is \$1.50 per one-way commute for each employee who commutes in the vehicle. Use this value to figure commuting value if the employer and employees meet all of the following criteria:

1. The vehicle is owned or leased by the employer and provided to one or more employees for use in a trade or business;
2. For bona fide noncompensatory business reasons, the employee is required to commute to and from work in the vehicle;
3. There is an established written policy under which the employee may not use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the

way between a business delivery and the employee's home);

4. Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and
5. The employee that is required to use the vehicle for commuting is not a control employee.

For employees of the agencies/universities of the State entity a control employee means:

1. Elected Official;
2. State agency/department official appointed by the governor; or
3. An employee with an annual compensation above \$75,000 per year, indexed for inflation.

STATE VEHICLE USAGE BY A NON-EMPLOYEE

Non-employees who use State vehicles for official State business are subject to the same rules and regulations as State employees. The use of State vehicles is not reportable on 1099 Returns.

MEMBERSHIPS IN COUNTRY CLUBS OR OTHER SOCIAL CLUBS

Effective January 1, 1994, no business deduction from income can be taken for dues or memberships paid to any club organized for business, pleasure, or other social purposes. This includes athletic, country, luncheon, sporting, airline and hotel clubs. Memberships must be held in the name of the college, institution, or foundation and its use restricted to business purposes to avoid taxation to the employee.

TICKETS TO ENTERTAINMENT OR SPORTING EVENTS

If the tickets do not fall under de minimis benefits as being "occasional tickets to theater or sporting events," the value is subject to withholding of federal income and employment taxes.

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Control Policies and Procedures

Agency _____

Year-End _____

A. Documentation

Yes No N/A

- ___ ___ ___ 1. Is there a formal plan of organization under which responsibilities are assigned to identify an employee as having received Fringe Benefits?

Name of person responsible: _____

Title: _____

- ___ ___ ___ 2. Does the agency have written instructions available for responsible agency personnel to use as a guide for consistent and accurate application of State and Federal policies on Fringe Benefits?

- ___ ___ ___ 3. Does the agency maintain written policies against the employees' personal use of State vehicles?

B. Recording and Execution of Transaction and Events

Yes No N/A

- ___ ___ ___ 4. If the employee's use of a State vehicle does not fall within one of the four general situations in which the use of an employer provided vehicle will result in a non-taxable fringe benefit to the employee, is the value of the personal use computed and included in the taxable wages as shown on Form W-2?

- ___ ___ ___ 5. Are non-employees who use State vehicles for official State business subject to the same rules and regulations as State employees?

- ___ ___ ___ 6. If tickets to entertainment or sporting events given to employees do not fall under de minimis benefits as being "occasional tickets to theater or sporting events," has the appropriate amount of federal income and employment taxes been withheld?

- ____ _ 7. Are membership dues in country clubs or other social clubs paid on behalf of an employee included in the taxable income of the employee?